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TC 3600

In re Application of	:	
Jean-Paul Vidot et al	:	
Application No. 09/868,182	:	DECISION ON PETITION
Filed: June 15, 2001	:	UNDER 37 CFR §1.181
Attorney Docket No.: CELA:082	:	
For: PYROTECHNICALLY UNLOCKABLE	:	
MECHANICAL LINKING DEVICE	:	
IMPLEMENTING A PISTON	:	

This is a decision on applicant's petition under 37 CFR 1.181 filed September 14, 2004 to invoke supervisory review of the Office action mailed July 12, 2004.

The petition is **GRANTED** to the extent indicated below.

The record reflects that on September 4, 2002 a non-final Office action was mailed setting forth an election of species requirement. On October 2, 2002 applicant filed a response to the election of species requirement, electing the embodiment of Figures 1-3 with traverse. On December 3, 2002 a non-final Office action was mailed acknowledging applicant's election, responding to applicant's traversal thereof and making the requirement Final, withdrawing claims 4 and 12-28 from consideration, objecting to the drawings under 37 CFR 1.83(a), rejecting claims 2, 3, and 5-11 under 35 U.S.C. 112, first paragraph, rejecting claims 1-3, 5-11, and 29 under 35 U.S.C. 112, second paragraph, rejecting claims 1, 2, and 29 under 35 U.S.C. 102, and indicating claims 3 and 5-11 contain allowable subject matter if amended to overcome the rejections under 35 U.S.C. 112, first and second paragraphs, and including the limitations of the base claim and any intervening claims. On May 14, 2003 applicant filed an amendment amending claims 1-3, 5-11, and 29, and submitted a proposed new Figure 9 to overcome the 37 CFR 1.83(a) drawing objections. On July 23, 2003 a final Office action was mailed indicating the proposed drawing correction and proposed changes to the specification filed May 14, 2003 were new matter, withdrawing claims 4 and 12-28 from consideration, objecting to the drawings under 37 CFR 1.83(a), rejecting claims 1-3, 5-11, and 29 under 35 U.S.C. 112, second paragraph, rejecting claims 1, 2,

and 29 under 35 U.S.C. 102, and indicating claims 3 and 5-11 contain allowable subject matter if amended to overcome the rejections under 35 U.S.C. 112, second paragraph, and including the limitations of the base claim and any intervening claims. On November 20, 2003 an Examiner Interview Summary was mailed. On November 24, 2003 applicant filed an Information Disclosure Statement, a Request for Continued Examination, proposed drawing corrections, and an amendment amending claims 1 and 3, and canceling claims 4 and 12-28.. On January 14, 2004 a non-final Office action was mailed indicating that the proposed drawing correction to Figure 9 contained new matter, objecting to the amendments filed May 14, 2003 and November 24, 2003 as containing new matter, objecting to the drawings under 37 CFR 1.83(a), rejecting claims 1-3, 5-11, and 29 under 35 U.S.C. 112, second paragraph, rejecting claim 1 under obviousness type double patenting, rejecting claims 1, 2, and 29 under 35 U.S.C. 102, and indicating claims 3 and 5-11 contain allowable subject matter if amended to overcome the rejections under 35 U.S.C. 112, second paragraph, and including the limitations of the base claim and any intervening claims. On April 14, 2004 applicant filed an amendment canceling claims 1, 2, and 29, and amending claim 3. On July 12, 2004 an Ex Parte Quayle Office action was mailed indicating that the proposed new Figure 9 contained new matter and objecting to the drawings under 37 CFR 1.83(a). On July 22, 2004 an Examiner Interview Summary was mailed.

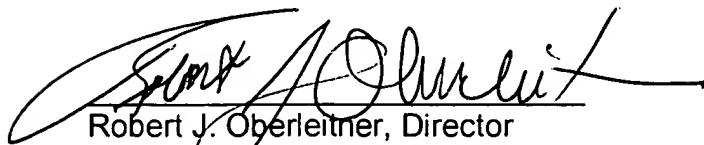
Applicant argues that the features shown in Figure 9 with respect to the shape of the tips 15 and the size, shape, and configuration of the chamber 27 are not new matter because Figure 9 is nothing more than a representation of the configuration recited in claim 7 and shows bending of the movable member and flexible tips, and corresponding change in configuration of the associated chamber after movement of the piston and relaxation of the member and tips. Applicant further argues that pages 9 and 10 of originally filed specification set forth the operation of the device and proposed Figure 9 is consistent with the specification and therefore does not constitute new matter.

MPEP 608.04(a) sets forth that matter not in the original specification, claims, or drawings is usually new matter. In the instant application pages 9 and 10 of the specification set forth the operation of the device including the location or distance the piston travels to move the tips in the direction of the face 25 and further sets forth that radial deformation of the tips will occur. Figures 2 and 3 illustrate the structure of the device. When the operation of the device is taken in conjunction with that which is illustrated in Figures 2 and 3 one of ordinary skill in the art would know the location or distance the piston travels to move the tips in the direction of the face 25 and that the tips would deform in the manner shown in proposed Figure 9. Therefore, all holdings of new matter made in the July 12, 2004 Ex Parte Quayle Office Action are hereby **WITHDRAWN**.

However, the original specification sets forth on page 10, lines 24-25, that the piston 21 is displaced until the collar 30 abuts on the abutment surface 32. Proposed Figure 9 does not illustrate the collar 30 abutting the surface 32. Since proposed Figure 9 does not illustrate the abutment of the collar 30 and surface 32 it is considered to contain new matter.

The application will be forwarded to the Examiner for further action on the merits consistent with the decision herein.

The petition is **GRANTED** to the extent indicated above.

A handwritten signature in cursive script, appearing to read "Robert J. Oberleitner", written over a horizontal line.

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Db/sm: 11/3/04

SM